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HUMAN RIGHTS COMMITTEE

Fifty-fourth session

SUMMARY RECORD OF THE 1416th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 10 July 1995, at 10.30 a.m.

Chairman: Mr. AGUILAR URBINA

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The meeting was called to order at 10.50 a.m.

OPENING OF THE SESSION

1. The CHAIRMAN declared open the fifty-fourth session of the Human Rights Committee. He welcomed Mr. Ayala Lasso, High Commissioner for Human Rights, and noted with pleasure the presence in the meeting room of Mr. Alston, Chairman of the Committee on Economic, Social and Cultural Rights, and of Mr. Houshmand, former Chief of the Implementation Branch, Centre for Human Rights. Four officials of the Thai Government would also be attending the session; he invited members of the Committee to converse with them with a view to the eventual ratification of the Covenant by that country.

STATEMENT BY THE HIGH COMMISSIONER FOR HUMAN RIGHTS

2. Mr. AYALA LASSO (High Commissioner for Human Rights) said that recent developments on the international scene called for closer monitoring of compliance with international human rights treaties, in particular the Covenants. That monitoring mechanism was by nature more juridical than political, arising as it did from a dialogue between independent bodies, such as the Human Rights Committee, and States eager to effect progress in that domain. Conceived as a worldwide system for the application of the principles of human rights that mechanism was better suited to resolving problems or improving situations than any other existing approach.

3. It was the Committee's task to consider the reports of all States parties, whether or not grave or systematic violations occurred in those countries. He wholeheartedly agreed with those who believed there to exist no human rights paradise on earth. Indeed, all the countries of the world experienced difficulties of one kind or another in the implementation of international human rights standards. The consideration of reports on a periodic basis made it possible to identify problems as they arose, and thus to prevent the occurrence of grave violations by "sounding the alarm". It also afforded a clear and detailed picture of the status of human rights throughout the world.

4. The Committee had, in the recent past, honed its methods of work and refined its procedures. A number of special decisions taken vis-à-vis States experiencing difficulties in the implementation of the Covenant testified to the success of that process. It was important to note that the consideration of reports by States and of communications from individuals often had an undeniable effect upon the protection of human rights by Governments and thus a not inconsiderable impact on people's lives. Both law and practice had begun to change, accompanied by the emergence of a new awareness.

5. Efforts aimed at disseminating the work of the Committee and at drawing it to the attention of competent national authorities must nevertheless continue to be made. For his part, one of his main goals was the strengthening of treaty procedures. Whenever he met with the representatives of a Government, he called their attention to the final comments adopted by the Committee following its consideration of that country's report. He had, in fact, on recent visits to Central America, alerted the Governments of Costa Rica and Panama to the findings of the Committee. Although it was too

soon to determine the success of that practice, he had noted that Governments had proved highly sensitive to the Committee's concerns and had by and large assured him that they would take measures to implement its recommendations.

6. An unprecedented recent meeting of persons chairing the human rights treaty bodies, attended by the Chairman of the Human Rights Committee and the Secretary-General, as well as by himself, testified to the importance of such treaties in the international system for the monitoring of human rights. The subjects discussed had included steps taken by the various treaty bodies to prevent human rights violations, among them early-warning measures and urgent procedures. The Secretary-General had applauded those initiatives, which reflected a number of the ideas he had put forth in an Agenda for Peace.

7. Finally, he assured the members of the Committee that he was entirely at their disposal to assist them in their work.

8. The CHAIRMAN thanked Mr. Ayala Lasso for his statement as well as for the efforts he had undertaken in Central America to bring to the attention of Governments the concerns and recommendations of the Committee. Subsequent to the meeting with the High Commissioner for Human Rights, the Costa Rican Minister for Foreign Affairs had in fact requested a meeting with him (the Chairman) to discuss ways and means of complying with the Covenant and of responding to the Committee's recommendations. Furthermore, the secretariat had placed a call to the Panamanian Foreign Ministry to broach the possibility of a visit by him to Panama to explore similar solutions in that country.

SOLEMN DECLARATION

9. Mrs. Chanet made a solemn declaration in accordance with article 38 of the Covenant and rule 16 of the rules of procedure.

ADOPTION OF THE AGENDA (item 1 of the provisional agenda) (CCPR/C/107)

10. Mr. PRADO VALLEJO suggested that the Committee should consider taking some action, perhaps in the form of a declaration, to commemorate the fiftieth anniversary of the United Nations, the creation of which had represented the beginnings of a worldwide commitment to human rights.

11. The agenda was adopted.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 2)

12. The CHAIRMAN invited the Committee to consider the proposed programme of work, which was before it in an informal document.

13. The proposed programme of work was adopted, subject to certain modifications.

14. The CHAIRMAN invited the Chairman/Rapporteur of the Working Group on Communications to make a brief oral report.

15. Mr. POCAR (Chairman/Rapporteur of the Working Group on Communications) said that the Group, composed of Mr. Bhagwati, Mrs. Chanet, Mr. Mavrommatis,

Mr. Prado Vallejo and himself, had adopted 12 recommendations and decisions in the course of its pre-sessional meeting. Four recommendations had been drawn up concerning adoption abuse with reference to article 5 of the Optional Protocol; those recommendations corresponded to five communications (two communications had been considered jointly). Three recommendations had been adopted declaring communications inadmissible; four communications had been declared admissible; and one decision had been taken to seek further information from a State party. Seven recommendations would thus come before the plenary. The Group had also discussed an additional three sets of draft views, but was awaiting receipt of further information before finalizing its recommendations.

16. The CHAIRMAN invited the Chairman/Rapporteur of the Working Group on Article 40 to make a brief oral report.

17. Mr. KLEIN (Chairman/Rapporteur of the Working Group on Article 40) said that the Group, composed of Mrs. Medina Quiroga, Mr. Aguilar Urbina, Mr. Francis and himself had, during the course of the previous week, prepared draft lists of issues with regard to periodic reports by Ukraine, the Russian Federation, the United Kingdom and Sri Lanka. In addition, it had conducted an intensive discussion on the Committee's methods of work; he drew the Committee's attention to a working paper containing the conclusions and recommendations of the Group. One recommendation addressed the matter of general comments: the Group had identified and prioritized those articles which in its view required either the elaboration or revision of general comments. Finally, he expressed his gratitude to the Secretariat for its able assistance.

18. The CHAIRMAN said that the Committee would take up the conclusions and recommendations mentioned by Mr. Klein at a forthcoming meeting.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 2)

List of issues to be taken up in connection with the consideration of the fourth periodic report of Ukraine (CCPR/C/95/Add.2)

Section I: Constitutional and legal framework within which the Covenant is implemented: state of emergency; non-discrimination and equality of the sexes; and rights of persons belonging to minorities (arts. 2, 3, 4, 26 and 27)

19. In reply to a question by Mr. LALLAH, Mr. KLEIN (Chairman/Rapporteur of the Working Group on Article 40) said that the Working Group had deliberately drafted very detailed lists incorporating all major issues for submission to the States parties whose reports were to be considered at the current session.

20. Mr. BUERGENTHAL said he feared that the very general nature of the question raised in paragraph (a) might prompt an unduly lengthy reply by the Ukraine delegation.

21. Mr. BÁN said that such a general question was highly appropriate in the case of States parties such as Ukraine and the Russian Federation whose fourth

periodic reports were to all intents and purposes initial reports. It was important to know how they were coping with the new situation arising from the disintegration of the Soviet Union.

22. As the Committee had not yet received any communications regarding Ukraine, he wondered whether the question raised in paragraph (d) might not be left until a later stage.

23. Mr. PRADO VALLEJO, referring to paragraph (a), said that it would be interesting to hear about human rights developments in Ukraine, especially in the political and legal fields, since the break up of the Soviet Union.

24. Mr. POCAR expressed concern that the delegation might devote a disproportionate amount of time to such a general description of the situation. He suggested restricting the scope of the question by inserting the words "the procedures for" in the second line between "on" and "the implementation".

25. Mr. KLEIN (Chairman/Rapporteur of the Working Group on Article 40) said that, while he could go along with Mr. Pocar's suggestion, he felt that the delegation should be given an opportunity to make a general statement on the human rights situation in Ukraine.

26. Ms. EVATT agreed that a State party submitting what amounted to an initial report should be given an opportunity to indicate its position on the exercise of human rights under the new circumstances.

27. With regard to paragraph (d), she felt that it was an opportune moment to ask Ukraine how it proposed to deal with communications arising under the Optional Protocol before the State party was actually put to the test.

28. Mr. FRANCIS said that he was in favour of retaining the question in paragraph (a).

29. Mrs. CHANET, agreeing with Mr. Buergenthal, said that the Ukraine delegation should not be given the opportunity to invoke the circumstances of the transitional period as an excuse for any shortcomings in the human rights situation. She therefore supported the amendment proposed by Mr. Pocar, which would require the delegation to focus on procedures for implementing the Covenant.

30. In response to a question by Mr. PRADO VALLEJO, the CHAIRMAN said that the Spanish version of paragraph (c) was unclear and that he would ask to have it redrafted.

31. Mr. BHAGWATI said that he was in favour of retaining the question in paragraph (d).

32. He agreed with Mr. Pocar's proposed amendment to paragraph (a).

33. A question that seemed to have been omitted from the list of issues concerned the procedures under constitutional law for enforcement of the Covenant and for ensuring individual enjoyment of the rights that it guaranteed.

34. The CHAIRMAN suggested that the amendment to paragraph (a) proposed by Mr. Pocar, which he personally supported, might answer the concern raised by Mr. Bhagwati.

35. Mr. MAVROMMATIS disagreed with the wording of the question in paragraph (d). He suggested amending it to read: "What are the procedures and mechanisms for the implementation of any views adopted by the Human Rights Committee under the Optional Protocol?"

36. As there was no core document for Ukraine, he felt that a general question should be raised regarding economic, political and religious factors and difficulties affecting implementation.

37. Mr. LALLAH agreed with the rewording of paragraph (d) suggested by Mr. Mavrommatis and with Mr. Pocar's proposed amendment to paragraph (a).

38. Mr. EL SHAFEI said he saw no need to include the question in paragraph (a), since it had been covered in the report.

39. He supported the rewording of paragraph (d) proposed by Mr. Mavrommatis.

40. The CHAIRMAN said that, if he heard no objection, he would take it that the Committee wished to adopt the amendment to paragraph (a) proposed by Mr. Pocar, the addition to paragraph (a) of the question proposed by Mr. Mavrommatis regarding factors and difficulties impeding enjoyment of the Covenant and the amendment to paragraph (d) proposed by Mr. Mavrommatis.

41. It was so decided.

42. Section I, as amended, was adopted.

Section II: Right to life: treatment of prisoners and other detainees; liberty and security of the person; and right to a fair trial (arts. 6, 7, 9, 10 and 14)

43. Mrs. CHANET pointed out that the question in paragraph (a) concerning the abolition of the death penalty for men over 65 years of age and for women did not refer to an obligation under the Covenant but had been prompted by a statement in paragraph 47 of the Ukraine report to the effect that such a measure was envisaged. She therefore suggested inserting a reference to that paragraph in the question.

44. Mr. KRETZMER proposed expanding the question in paragraph (e) to include an inquiry about formal procedures for the investigation of allegations and complaints.

45. The CHAIRMAN, responding to a comment by Mr. PRADO VALLEJO, said that he would request a retranslation of the Spanish version of paragraph (e).

46. He said that, if he heard no objection, he would take it that the Committee wished to adopt the amendments proposed by Mrs. Chanet and Mr. Kretzmer.

47. It was so decided.

48. Section II, as amended, was adopted.

Section III: Freedom of movement, right to privacy, freedom of thought, conscience and religion, freedom of expression, prohibition of propaganda for war and incitement to national, racial or religious hatred, right to freedom of association (arts. 12, 17, 18, 19, 20, 22 and 25)

49. Ms. EVATT said that the word "on" after the word "clarify" in the third line of paragraph (d) should be deleted.

50. Section III, as amended, was adopted.

51. The list of issues as a whole, as amended, was adopted.

List of issues to be taken up in connection with the consideration of the fourth periodic report of the Russian Federation (CCPR/C/84/Add.2)

Section I: Constitutional and legal framework within which the Covenant is implemented; state of emergency; right to self-determination; and rights of persons belonging to minorities (arts. 1, 2, 4, 5 and 27)

52. Mr. PRADO VALLEJO requested that the Spanish version of paragraph (b) should be redrafted.

53. Mr. ANDO proposed amending paragraph (a) to bring it into line with the amended version of section I (a) in the list of issues for Ukraine.

54. Mr. EL SHAFEI, referring to paragraph (a), reiterated his earlier reservation concerning the equivalent request for clarification in the list of issues to be taken up in connection with the report of Ukraine: it seemed to him that the clarification was already provided in the report itself.

55. Mr. LALLAH pointed out that in paragraph (b), and notably in the reference to the Optional Protocol, an adjustment similar to that made in the list of issues to be taken up in connection with the report of Ukraine was called for.

56. Mr. POCAR agreed with the previous speaker and added that he would prefer the substance of the paragraph to be divided into two parts, as had been done in the list of issues for Ukraine.

57. Mr. KLEIN (Chairman/Rapporteur of the Working Group on Article 40) said that the basic purpose of section I (a) in each of the lists of issues was to furnish the delegations with an opportunity to make a general introductory statement on the situation of human rights in their respective countries before turning to the more specific issues raised by the Committee. He agreed with the proposed adjustments in the formulation of section I (b) in the list of issues concerning the report of the Russian Federation.

58. Mr. BUERGENTHAL suggested that the ordering of the two questions in paragraph (g), concerning events in Chechnya, should be reversed, to set the issues in a proper sequence of importance.

59. Mr. LALLAH said it was common knowledge that the President of the Supreme Court had at some stage been dismissed. He thought that the Committee might at some suitable point in the list of issues, or spontaneously in the dialogue, raise that matter, perhaps with special reference to article 14 of the Covenant on entitlement to a fair hearing by an impartial tribunal established by law.

60. Mr. KLEIN (Chairman/Rapporteur of the Working Group on Article 40) said that following the appointment of all the judges and the recent election of the President of the new Constitutional Court, the establishment of that body was now complete.

61. Mr. LALLAH, replying to a question by the CHAIRMAN, said that upon reflection, he now believed that his concern fell rather within the purview of article 2 of the Covenant, and related to the impartiality of the judicial function at all levels. If new developments had recently occurred in the Russian Federation, the Committee might inquire orally as to any measures adopted to guarantee the independence of the judiciary and security of tenure; his own specific concern could be raised as an ancillary question.

62. Mrs. MEDINA QUIROGA observed that, if she understood the Committee's procedures correctly, issues that demanded some time for consideration by the delegation before a response could be given were communicated in writing to the reporting State, oral questions being limited to matters that lent themselves to spontaneous replies.

63. Mr. BUERGENTHAL asked whether Mr. Lallah's undoubtedly important concern might be met by amending paragraph (d) to read: "... functions, powers, activities and independence of the Constitutional Court ...".

64. Mr. KLEIN (Chairman/Rapporteur of the Working Group on Article 40) commended that suggestion.

65. Mr. LALLAH said that he would be satisfied if the amendment read: "... of the Constitutional Court and the judiciary in general ...".

66. Mr. BHAGWATI observed that the question ought rather to move from the general to the particular; reference should first be made to the independence of the judiciary, and then to that of the Constitutional Court.

67. The CHAIRMAN said he took it that the Committee accepted Mr. Lallah's formulation.

68. It was so decided.

69. Section I, as amended, was adopted.

Section II. Right to life; treatment of prisoners and other detainees; liberty and security of the person; right to a fair trial (arts. 6, 7, 9, 10 and 14)

70. Mr. PRADO VALLEJO suggested that the contents of paragraphs (g) and (h), which both referred to events and military operations in Chechnya, might be merged.

71. The CHAIRMAN said he understood that the Working Group had deemed the impact of those events and operations to have been serious enough to involve the different articles of the Convention that were enumerated in the headings of both sections I and II.

72. Mr. KLEIN (Chairman/Rapporteur of the Working Group on Article 40) confirmed that interpretation.

73. Section II was adopted.

Section III. Freedom of movement, right to privacy, freedom of thought, conscience and religion, freedom of expression, prohibition of propaganda for war and incitement to national, racial or religious hatred, right to freedom of association, non-discrimination and equality of sexes, and protection of the family and children (arts. 12, 17, 18, 19, 20, 22 and 25)

74. Section III was adopted.

75. The list of issues as a whole, as amended, was adopted.

List of issues to be taken up in connection with the consideration of the fourth periodic report of the United Kingdom of Great Britain and Northern Ireland (CCPR/C/95/Add.3)

Section I. Constitutional and legal framework within which the Covenant is implemented; non-discrimination and equality of the sexes; and rights of persons belonging to minorities (arts. 2, 3 and 27)

76. Mr. BUERGENTHAL, supported by Ms. EVATT, suggested that paragraph (d), which read "Please comment on the prospects for a definitive resolution of the situation in Northern Ireland ...", might be formulated in a manner that demonstrated more clearly the relevance of that issue to the Committee's responsibilities under the Covenant.

77. Ms. EVATT said she also considered that paragraph (c) should be reworded. It seemed clear that the United Kingdom Government did not envisage ratification of the first Optional Protocol in the near future, which rendered the question posed superfluous. To her mind, the Committee should endeavour to elicit the views of the United Kingdom delegation concerning remedies for violations of rights that were enshrined in the Covenant but not covered by the European Convention on Human Rights.

78. She noted that paragraphs 492-497 of the United Kingdom report listed measures to protect Celtic language, and wondered whether the Working Group envisaged any other specific issues under paragraph (h).

79. Mrs. CHANET, referring to paragraph (d) and to Mr. Buergenthal's question, pointed out that the relevant paragraphs of the report (13 to 17) were listed therein under the heading "Article 1". Consequently, that article should be added to the list contained in the heading of section I.

80. Mr. KLEIN (Chairman/Rapporteur of the Working Group on Article 40) said that Ms. Evatt's point concerning paragraph (c) was well taken. However, the current attitude of the United Kingdom Government to the matter of ratifying the first Optional Protocol was not expressly set out in the report; he consequently felt that it would be in order for the Committee - if only by means of an oral inquiry - to attempt to establish what was the current thinking on that subject.

81. He accepted Mrs. Chanet's proposal and said that, in his view, it was worth maintaining the question in paragraph (b).

82. Mr. FRANCIS said there was another dimension to paragraph (c); in the context of the probability of a successor Government in the United Kingdom, the Committee would be expressing its expectation that any such successor Government would ratify the Optional Protocol as other States parties to the European Convention on Human Rights had done.

83. Mr. MAVROMMATIS said he was not satisfied that a mere reference to article 1 depoliticized paragraph (d). He would prefer to ask a straightforward question as to whether the improved situation in Ireland had enhanced the environment for the protection and enjoyment of human rights, and what the prospects were in that connection.

84. Mrs. MEDINA QUIROGA supported the remarks made by Ms. Evatt with regard to paragraph (c), as the Government of the United Kingdom had already stated that it did not intend to ratify the first Optional Protocol. She also endorsed Mr. Mavrommatis' proposal in regard to paragraph (d).

85. The CHAIRMAN said it was important to build on what the Government of the United Kingdom had stated in its fourth periodic report, and to ask what other measures it would be taking to protect rights under the Covenant that were not covered in the European Convention on Human Rights. With regard to paragraph (d), he agreed with the proposal made by Mr. Mavrommatis.

86. Mr. BHAGWATI also agreed with Mr. Mavrommatis regarding paragraph (d).

87. Mr. KLEIN (Chairman/Rapporteur of the Working Group on Article 40) said he was not satisfied with the situation regarding paragraph (d). The fourth periodic report dealt with the question under article 1, and indeed paragraph 17 of the report stated: "The United Kingdom Government agreed that 'it is for the people of the island of Ireland alone, by agreement between the two parts respectively, to exercise their right of self-determination on the basis of consent, freely and concurrently given, North and South, to bring about a united Ireland, if that is their wish'." If the principle of self-determination were applied, it was not for the Committee to detract from it.

88. Mr. FRANCIS said that, while he could accept in principle the compromise sought regarding paragraph (c), the report made specific reference to proposed legislation for the entire United Kingdom which would in effect abrogate the right of an accused person to silence when charged in court. There was no reason why the Committee should not ask about the intentions of the Government of the United Kingdom with regard to enforcement of rights under the Covenant that were not covered by the European Convention on Human Rights. It was quite clear that the current mood of that Government was to rein in the implementation of human rights.

89. The CHAIRMAN remarked that the question concerned was not directed specifically to the right to silence.

90. Mr. FRANCIS said he was concerned about the compartmentalized approach to the implementation of human rights. The fact was that the new legislation would deprive every accused person in the United Kingdom of the right to silence. It was a clear indication of the approach of the Government of the United Kingdom to the implementation of human rights generally.

91. Mr. KLEIN (Chairman/Rapporteur of the Working Group on Article 40) said that all States parties to the European Convention on Human Rights had faced the same situation as the Government of the United Kingdom, but nearly all had accepted the first Optional Protocol, with or without reservations. In his view, it was worth asking if the United Kingdom was intending to follow their example, since the matter was not clearly answered by the report itself. He was in favour of retaining the question.

92. Ms. EVATT proposed, in a spirit of compromise, that the text of paragraph (c) should be left as it stood, but that a sentence should be added that would ask whether the Government of the United Kingdom envisaged ratifying the first Optional Protocol in the near future or providing other independent remedies in cases of alleged violations of human rights. In the case of some of those rights, there were no remedies available in the United Kingdom; there was only recourse to the European Court of Human Rights.

93. The CHAIRMAN observed that there was consensus in the Committee on all paragraphs except (d).

94. Mr. BUERGENTHAL said he would be prepared to support the proposal of Mr. Mavrommatis regarding paragraph (d).

95. The CHAIRMAN said he took it that members were in favour of Mr. Mavrommatis' proposal with regard to paragraph (d) and that Mrs. Chanet and Mr. Klein might agree to ask oral questions regarding article 1 of the Covenant.

96. It was so decided.

97. Section I, as amended, was adopted.

Section II. State of emergency; right to life, liberty and security of the person, treatment of prisoners and other detainees, and right to a fair trial (arts. 4, 6, 7, 9, 10 and 14)

98. Ms. EVATT said she feared that the answer to the question posed in paragraph (k) would be in the affirmative, but it did not appear in the documents supplied by the Government of the United Kingdom, and the question should stand. She proposed to put an oral question regarding progress in the case now pending before the European Commission of Human Rights on that issue.

99. Section II was adopted.

Section III. Freedom of movement and expulsion of aliens, protection of the family and children, and right to participate in the conduct of public affairs (arts. 12, 13, 24 and 25)

100. Mr. PRADO VALLEJO said it was not clear whose exclusion, deportation and removal was referred to in paragraph (d).

101. Mr. KLEIN (Chairman/Rapporteur of the Working Group on Article 40) proposed the addition, after the word "removal" in paragraph (d), of the words "of aliens".

102. It was so decided.

103. Section III, as amended, was adopted.

104. The list of issues as a whole, as amended, was adopted.

List of issues to be taken up in connection with the consideration of the third periodic report of Sri Lanka (CCPR/C/70/Add.6)

Section I. Constitutional and legal framework within which the Covenant is implemented; non-discrimination and equality of the sexes; state of emergency; right to take part in the conduct of public affairs; and rights of persons belonging to minorities (arts. 2, 4, 25 and 27)

105. Section I was adopted.

Section II. Right to life, liberty and security of the person, treatment of prisoners and other detainees, and right to a fair trial (arts. 6, 7, 9, 10 and 14)

106. The CHAIRMAN said that the question regarding the rules and regulations governing the use of weapons by the police and security forces had been changed. The problem had always been that when considering whether sanctions were imposed on members of the police and security forces found to have violated the rules and regulation, it was realized that the rules and regulations themselves were often not compatible with the Covenant. With the newly formulated question, members of the Committee could first decide on such compatibility.

107. Section II was adopted.

Section III. Liberty of movement and expulsion of aliens, freedoms of conscience, religion, assembly and association, and protection of the family and children (arts. 12, 13, 18, 19, 20, 21, 22, 23 and 24)

108. Section III was adopted.

109. The list of issues as a whole was adopted.

110. Mr. ANDO recalled that at the forty-ninth session of the Committee no summary records had been provided. The Committee had subsequently received some kind of assurance that summary records in English would be made available to it. He sought clarification of the present position regarding the matter.

111. The CHAIRMAN said he would ensure that the Committee was given the requisite information regarding the availability of summary records.

The meeting rose at 12.40 p.m.